



POLICE DEPARTMENT

August 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Arnaldo Simo
Tax Registry No. 951259
Police Service Area 2
Disciplinary Case No. 2013-11063

The above-named member of the Department appeared before me on May 19, 2015, charged with the following:

1. Said Police Officer Arnaldo Simo, on or about September 30, 2012, at approximately 1625 hours, while assigned to Housing PSA 5 and on duty, in the vicinity of [REDACTED], New York County, abused his authority as a member of the New York City Police Department in that he frisked [REDACTED] without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Simone Manigo, Esq. Respondent was represented by John Tynan, Esq. Respondent, through his counsel, entered a plea of not guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that on September 30, 2012, Respondent was on duty, in uniform, assigned to the Housing Bureau's Police Service Area (PSA) 5, addressing conditions within the Johnson Houses, a New York City Housing Authority (NYCHA) Development in Manhattan, with his partner Police Officer Amapro Hernandez. One of the buildings located within the Johnson Houses is [REDACTED]. [CCRB Exhibits 1-4 are photos of the entrance, the parking lot, and two benches in the area of [REDACTED]].

CCRB called Hector Campos and Clifton Brown as witnesses and Respondent testified on his own behalf.

Campos testified that on September 30, 2012, at approximately 1630, he, [REDACTED] and two other men were standing near the entrance to [REDACTED] where Campos' aunt resides. Campos recalled that Respondent and other police officers approached the men but walked past them. Respondent eventually returned and told them that they had to move, so Campos and the other men moved and sat on a bench. Respondent made a telephone call. When Respondent completed his call, he returned to the group of men and told them to get up against the gate. Campos and the other men got up from the bench, stood against the gate and were searched by Respondent and other police officers. Campos heard Brown ask Respondent, "Why you doing this?" Brown was handcuffed and searched. After the police examined their identification, they were told to leave. Brown was eventually un-handcuffed and issued a summons.

On cross examination, Campos acknowledged that he was convicted of possessing cocaine in 2012 and that he will be on probation until 2018.

Brown testified that at about 1630 hours on September 30, 2012, he, Campos, Person A and Person B were in the area of [REDACTED] when Respondent approached them and told them to move. Brown walked down the street but about "10 or 15 minutes" later, he returned to the area of [REDACTED] and sat down on a bench in the playground with Campos, Person A and Person B. Respondent approached them and told them to give him their IDs. Campos, Person A and Person B all provided identification to Respondent but Brown did not. Brown asked him, "Why do you want an ID for? We didn't do nothing." Respondent then lifted him off the bench, placed him in handcuffs, searched his waist area, patted him down, and then put him back on the bench. Brown told Respondent that he wanted to speak to a supervisor. Respondent told Campos and Person B that they were free to leave. Respondent wrote out and handed Brown a summons. Person A was directed to remain at the scene but did not receive a summons. Brown filed a complaint that Respondent had harassed him.

On cross-examination, Brown admitted that he told Respondent "I'm not getting up against the gate." Brown acknowledged that he has been convicted of felonies for selling or possessing drugs four times; that one of these convictions was for selling cocaine at the Johnson Houses; and that he has a pending criminal case in which he is charged with Trespass and Criminal Possession of a Controlled Substance in the Seventh Degree. Brown also acknowledged that in 2008, right before he began serving a three-year prison term, Police Officer Kennedy handed him a paper, told him to sign it and stated, "You can't be on housing grounds." When Brown refused to sign the paper,

Kennedy told him that "the paper is going to be in your records anyway. [The paper was a Trespass Order forbidding Brown from entering onto NYCHA properties.]

Respondent testified that at about 1625 hours on September 30, 2012, he saw two police officers having a conversation with Person C. He and his partner joined the discussion and heard Person C state that four men were selling "PCP" (phencyclidine) out of a black bag in front of [REDACTED]. Respondent was able to see the four men who Person C pointed to in front of [REDACTED].

After observing the men for five minutes, during which Respondent saw no drug sales or other illegal activity, Respondent and his partner entered the courtyard of [REDACTED] and approached the four men Person C had identified who were seated on benches in front of the building. Respondent recognized Brown from a previous encounter with him. Respondent and his partner greeted them and asked them what they were doing there. They replied that they were just hanging out and enjoying the day and asked "what is this about?" Respondent told them, "We're conducting an investigation." While Respondent was conversing with the men, he looked for the black bag that Person C had mentioned but he saw no bag.

Respondent testified that since they had stopped and questioned the men, he was required to prepare Stop, Question and Frisk forms (UF 250s) and so he requested that each of the men produce identification from so that he could complete the UF 250s. Person B and Campos cooperated and provided identification but Brown got up from the bench, began waving his arms and loudly stated, "I don't have to fucking give you ID. I don't fucking got to do what you're telling me." Respondent asked Brown to calm down and cooperate and told him that his behavior was uncalled for. Brown then placed his

hands in his pockets. Respondent told him to remove his hands from his pockets several times. Brown continued to voice his objections in a loud, aggressive voice, which caused a crowd to start forming.

Respondent decided to arrest Brown for Disorderly Conduct. Respondent again asked him for identification and Brown again refused to provide it. Respondent then placed handcuffs on Brown and frisked the outside of his pants. Respondent conducted the frisk because he feared that Brown was secreting a weapon one of his pockets since he had refused to remove his hands from his pockets when Respondent directed him to do so. When Respondent frisked the outside of Brown's pants, he felt a bulge. Respondent asked Brown what it was and he replied that it was an eyeglass case. Respondent also discerned that Brown had a wallet and ID case in his pants pockets. Respondent then sat Brown down on the bench.

When Respondent told Brown that he would have to transport him to the PSA for the issuance of a summons since he had refused to identify himself, Brown then expressed an interest in cooperation and offered to produce his identification. Respondent removed the handcuffs from Brown's wrists and Brown provided his identification. Respondent wrote out a summons charging Brown with Disorderly Conduct, handed it to Brown, and allowed Brown to walk away. When Respondent returned to his command at the end of his tour he was told that a complaint had been lodged against him.

FINDINGS AND ANALYSIS

It is charged that Respondent abused his authority in that he frisked Brown without sufficient legal authority.

In his testimony at this trial, Respondent acknowledged that he had frisked Brown for his and his partner's safety after Brown placed his hands in his pockets and refused to remove his hands from his pockets even after Respondent had directed him to do so several times. Although Respondent's concern that Brown might be secreting a weapon in a pocket underneath one of his hands is understandable, the information Respondent received from Person C was that Brown was one of four men who were selling PCP, not that Brown was selling weapons or committing a violent crime. Thus, even though some drug dealers may carry weapons, at the point when Brown refused to remove his hands from his pockets, Respondent possessed insufficient information to meet the Patrol Guide's threshold that during a stop and question street encounter "a uniformed member of the service" may lawfully "frisk" a person only "if you reasonably suspect you or others are in danger of physical injury."¹

However, I find that Respondent did possess legal authority to frisk Brown based on the fact that Respondent had probable cause to arrest Brown for having committed the violation of Disorderly Conduct in his presence prior to placing him in handcuffs and frisking him. I credit Respondent's testimony that after he asked Brown to produce identification, Brown loudly and aggressively told him, "I don't have to fucking give you ID. I don't have to do what you say," and that Brown continued loudly challenging Respondent thereby recklessly creating the risk of public inconvenience in that a crowd

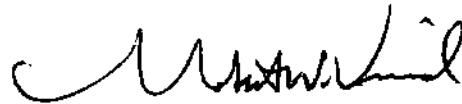
¹ Patrol Guide Procedure No. 212-11 - UNIFORMED MEMBER OF THE SERVICE.

started to gather at the scene. Under these circumstances, Respondent had probable cause to arrest Brown for Disorderly Conduct.² Once Respondent determined to place Brown under arrest, he was entitled to frisk him to ensure his safety as the arresting officer.³

Respondent's testimony that he told Brown that he would have to transport him to the station house for the issuance of the Disorderly Conduct summons if he continued to refuse to provide ID, accurately reflects the Patrol Guide's requirement that a uniformed member of the service must remove a violator to the command for investigation if there is doubt concerning the identity of the violator.⁴ The fact that when Brown finally agreed to provide ID, Respondent used his discretion to issue Brown a summons for Disorderly Conduct at the scene does not serve to de-justify Respondent's frisk of Brown since this summons was issued in lieu of a lawful arrest.

Respondent is found not guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

SEP 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

² See *People v Weaver*, 16 NY3d 123, 128 (2011) which held that a defendant may be guilty of disorderly conduct regardless of whether the action results in public inconvenience, annoyance or alarm if the conduct recklessly creates a risk of such public disruption.

³ See Patrol Guide Procedure No. 208-05 "Arrests-General Search Guidelines;" See also *People v Jimenez*, 22 NY3d 717 (2014).

⁴ Patrol Guide Procedure No. 209-09(4) – NOTE.